

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 668 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

LAKUM GAMBHIRJI KANAJI

Appearance:

Mr. R.C. Kodekar Assistant Public Prosecutor
for the appellant.

MR RC JANI for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 12/10/1999

ORAL JUDGEMENT

1. Appellant has filed this appeal under Section 378 of the Code of Criminal Procedure challenging the order of acquittal of the respondents for the offences punishable under Sections 341, 323, 324, 504, 114 of the Indian Penal Code and under Section 135 of the Bombay Police Act, recorded by the learned Judicial Magistrate, First Class, Vijapur, on May 9, 1990, in Criminal Case

2. The prosecution case be summarized as under:- On October 3, 1987, at 7 a.m. Natwarlal Ambalal had gone on his motor-cycle to drop his brother, Narendrabhai, at S.T. Bus stand of Vihar Cross road. After dropping Narendrabhai at the S.T. Bus stand, he was returning to his house. The respondents, who were armed with sticks and dharia, intercepted Natwarlal Ambalal, near Mandali and assaulted Natwarlal with deadly weapons, i.e. sticks and dharias. Natwarlal was seriously injured and fell down on the road. On shouts being raised by Natwarlal, Shankerbhai Maganbhai and Karsanbhai Virchanddas came to the rescue of Natwarlal. The respondents ran away as they saw Shankerbhai Maganbhai and Karsanbhai Virchanddas running towards Natwarlal. Natwarlal was brought in injured condition to the house of the complainant, i.e. Nathalal Ambalal. Natwarlal was removed to Kukarwada Primary Health Center and after taking primary treatment he was removed to the Mehsana Civil Hospital. The brother of Natwarlal, namely, Nathalal Ambalal, lodged a complaint against the respondents at Vijapur Police Station. Police Sub-Inspector, D.A. Joshi, registered offences punishable under Sections 341, 323, 324, 504, 114 of the Indian Penal Code and under Section 135 of the Bombay Police Act against the respondents at C.R. No.412/87. PSI D.A. Joshi recorded statements of witnesses and arrested the respondents. During the custody, the respondents showed their willingness to produce muddamal articles which were seized under panchanama recorded under Section 27 of the Indian Evidence Act. PSI D.A. Joshi collected medical certificate of injuries of Natwarlal and after completing investigation submitted chargesheet in the court of learned Judicial Magistrate, First Class, Vijapur, which came to be numbered as Criminal Case No.1489 of 1987.

3. Charge Exh.5 was framed against the respondents for the offences punishable under Sections 341, 323, 324, 504, 114 of the Indian Penal Code and under Section 135 of the Bombay Police Act. The charge was read over and explained to the respondents who pleaded not guilty and claimed to be tried. In order to prove charge against the respondents, the prosecution examined P.W.1, complainant, Nathalal Ambalal, Exh.17, P.W. 2, injured, Natwarlal, Exh. 22, P.W.3, Shankerbhai Maganbhai, Exh.24, P.W.4, Karsanbhai Virchandbhai Exh.26, P.W.5 Pravinbhai Manilal, Exh.27, P.W. 6 Manuji Dandhanji Exh.30, P.W.7 Pratapji Chandanji, Exh.32, P.W. 8, Chaturji Panaji Exh.36, P.W.9, Ramabhai Kacharabhai Patel, Exh.45, P.W.10 Hadiyol Baldevji Bhalaji Exh.49,

and P.W.11, PSI, D.A. Joshi, Exh.52. The prosecution also produced documentary evidence such as complaint, injury certificate of Natwarlal, panchanama of seizure of incriminating articles, panchanama of place of incident, etc. to prove the case against the respondents. After the prosecution evidence was over, further statements were recorded of the respondents under Section 313 of the code of Criminal Procedure. The respondents in their further statements stated that false case has been cooked up against them and they were innocent. Learned Judicial Magistrate, First Class, Vijapur, after appreciating oral as well as documentary evidence, and arguments advanced by the learned counsel for the respondents as well as complainant and State of Gujarat, concluded that the prosecution had not examined independent witnesses to prove charges against the respondents. It was concluded that the prosecution had tried to suppress the genesis of the occurrence of the incident as one Arvindbhai had also sustained injuries during the said incident, but, neither he was examined at the trial nor his injury certificate was produced, even though medical officer had deposed that said Arvindbhai was brought to the hospital along with injured Nathalal. It was further concluded by the learned Magistrate that there was previous enmity between the complainant and the respondents and the defence story was more probable than the prosecution version about occurrence of the incident. It was further concluded by the learned Magistrate that the injuries sustained by witness, Nathalal, was possible by a fall from the motor-cycle. It was further concluded that the prosecution had not proved seizure of muddamal articles from the respondents as the panchas had turned hostile. The learned Magistrate, on the basis of abovereferred to conclusions, acquitted the respondents of the charge framed against them, which is challenged by the appellant by filing this appeal.

4 Mr. R.C. Kodekar, learned Additional Public Prosecutor, has taken me through the evidence of the prosecution. The learned APP submitted that the order of acquittal recorded by the learned Magistrate is contrary to law and evidence on record and the learned Magistrate has given more weightage to the contradictions and omissions. As noticed in the oral evidence of the prosecution witnesses, since the incident had occurred at 7 a.m. in the morning, i.e. in broad day light, there was no question of mistaken identity because the eye-witnesses had identified the respondents as assailants who inflicted injuries on the person of Nathalal. It is submitted by the learned APP that the order of acquittal recorded by the learned Magistrate is

perverse and, therefore, the appeal be allowed.

5. Learned counsel, Mr. R.C. Jani, appearing for the respondents, has vehemently submitted that there were many contradictions and omissions in the evidence of the prosecution witnesses. This shows that the prosecution was trying to suppress the genesis of occurrence. He submitted that because of long drawn enmity between two groups, the respondents were falsely involved in the present incident. The learned counsel for the respondents submitted that incriminating articles, i.e. sticks and dharias, were not proved to have been seized from the possession of the respondents. It is submitted by the learned counsel for the respondents that independent witnesses, even though available at the place of incident, were not examined nor their statements were taken by the Investigating Agency. Therefore, there was likelihood of prosecution falsely involving the respondents. It is submitted by the learned counsel for the respondents that the judgment and order of the learned Magistrate is just and proper and the learned Magistrate has given benefit of doubt in favour of the respondents and the prosecution has not proved its case beyond reasonable doubt and the appeal be dismissed.

6. In my view, there is no substance in any of the contentions urged on behalf of the appellant, and the appeal cannot be entertained. In the present case, the complainant is not eye-witness and he had lodged the complaint as per the say of eye-witness, Shankerbhai, and injured witness, Natwarlal. The injury caused on the person of Nathalal has not been proved to the effect that the respondents had caused those injuries. The genesis of incident was suppressed by the prosecution. No independent witnesses were examined even though they were available at the place of incident, and the witnesses, whose statements came to be recorded and who were examined before the Court, were related to the complainant and injured witness, Nathalal. The learned Magistrate has also observed in his judgment that the Medical Officer had examined one Arvindbhai who had also sustained injuries and the said injuries were possible as a result of an accident. The learned Magistrate further observed that said Arvindbhai was not examined by the prosecution which casts serious doubt about the version of the prosecution that injured Nathalal and Arvindbhai were travelling in the motor-cycle and, due to the accident, both, Nathalal and Arvindbhai, sustained injuries, which was more probable. In any case, the conclusions arrived at by the learned Magistrate are

reasonable and the learned Magistrate has not erred in giving benefit of doubt in favour of the respondents. Under the circumstances, it cannot be said that any error is committed by the learned Magistrate in acquitting the respondents of the offences with which they were charged.

7. This is an acquittal appeal in which the court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned Magistrate who had an advantage of observing demeanour of witness. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondents. Suffice it to say that the learned Magistrate has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Magistrate in order to convince us to take the view contrary to the one already taken by the learned Magistrate. Therefore, the acquittal appeal deserves to be rejected.

8. For the foregoing reasons, I do not find any substance in the appeal. The appeal, therefore, fails and is dismissed. Muddamal be disposed of in terms of the impugned judgment.

(swamy)